

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE

THE UNITED STATES OF AMERICA,)

PLAINTIFF,)

VS.)

RITA MARIE LAVELLE,)

DEFENDANT.)

COPY

CR 04-374(A) -SJO

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

FRIDAY, SEPTEMBER 24, 2004

VOLUME IV OF V

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1 verdict or have been discharged.

2 The term "vulnerable victim" means a person who is a
3 victim of the offense of conviction and who is unusually
4 vulnerable due to age, physical or mental condition, or who is
5 otherwise particularly susceptible to the criminal conduct.

6 That concludes the court's reading of the jury
7 instructions. The record should reflect that all jurors were
8 present with the alternates, counsel and the parties.

9 As mentioned, counsel will now have the opportunity to
10 address you in argument. This is the portion or time in the
11 trial where each side can argue their case to you. Please
12 remember what has already been said or stated. Statements of
13 counsel are not evidence.

14 The government commences the argument first, starts
15 first. We'll hear from Ms. Kim. Mr. Cephas will follow, and
16 then the government gets one final opportunity to address the
17 jury.

18 The government gets two opportunities and the defendant
19 only one opportunity because the government has the burden of
20 proof in this case.

21 Mrs. Kim.

22 MS. KIM: Thank you, Your Honor.

23 THE COURT: I would ask counsel, when you're making
24 reference to exhibits, to please make sure the exhibit number is
25 stated for purposes of recordkeeping.

1 There's no dispute that Joseph Bertelli, had he actually signed
2 those documents, could have been indebted for \$52,130.

3 The special verdict form will also ask you to determine
4 whether or not at least one of the victims was vulnerable by
5 reason of their age or their physical condition.

6 And you've met Mr. Bertelli yourselves, ladies and
7 gentlemen. There's no doubt that he was a vulnerable victim.
8 He is elderly, he is physically impaired, and, as you know, he
9 is a cancer survivor. As you know, the defendant knew this at
10 the time she committed her fraud.

11 The special verdict form will also ask you to consider
12 whether there is more than one victim. Ladies and gentlemen,
13 there are at least two victims in this case: Capital Partners,
14 which actually gave the money to defendant; and Joseph Bertelli,
15 whose forged signature indebted him for \$52,130.

16 Thank you, Your Honor.

17 MR. CEPHAS: That's it. Three-and-a-half years, more
18 than three-and-a-half years Agent Freihon's been working on this
19 case. That's it. Joe Johns, more than two years. That's it?

20 Ladies and gentlemen, as I told you during the opening,
21 my client, Rita Lavelle, she is on trial not because of that she
22 did, but because of who she is. She is on trial to give these
23 three people a chance to get in the news, a chance to get in the
24 headlines.

25 I told you how this case started: It started from a

1 search warrant, a search warrant that Agent Freihon asked for,
2 and this is language from that search warrant which is Defense
3 Exhibit 106. Paragraph 2 of her affidavit, it identifies Gene
4 Van Houten, Robert Cole, Denova. In support of an arrest
5 warrant, Gene Van Houten, Robert Cole. You don't see
6 Ms. Lavelle's name there.

7 You're going to get a chance to look at Exhibit 106.
8 You're going to see the whole search warrant. You won't see her
9 name anywhere in there because she didn't do anything.

10 How did this case really start? Well, when you get a
11 chance to look at this, look at page 20 of her affidavit. And
12 in Exhibit 106, you're going to see where she indicated that on
13 January 18, Agent Freihon got a call from a county inspector.
14 Why? Because earlier that day, this inspector decided to pull a
15 fast one on Denova. He calls up Denova: "I'm going to be over
16 in an hour. I'm coming over to check out the lot, make sure
17 you're in compliance." It's in there. You'll get a chance to
18 see that.

19 Denova: "Oh, cool. We'll be here. Come on over."

20 This inspector wasn't an hour's drive away in some
21 county building. He was hiding in a lot across the street. How
22 do I know that? It's in here. He was hiding in a lot because
23 he had suspected that they would be violating the law; he
24 suspected they were hiding hazardous materials in a tractor
25 trailer on the lot.

1 So he hangs up, hangs up his cell phone, and from the
2 bushes across the street, he watches. And don't you know, but a
3 couple minutes later, some guy comes hustling out of the
4 building, jumps in a truck, backs up to a trailer and drives
5 off.

6 Well, he followed, and that trailer got pulled over.
7 Look at page 23 of her affidavit. What did she find -- or
8 excuse me -- what did the inspector find? Well, blasting caps,
9 fuses, military grenade fuses, rocket propellants, various live
10 military ordinance and inert military ordinance. Significant.
11 This was before 9/11, but it's still somewhat significant. But
12 the county had taken care of that.

13 But nevertheless, they called the FBI. So Agent
14 Freihon decided, I'm going to pile on. I'm going to see if I
15 can get anything out of Denova. I'm going to get a search
16 warrant. I'm going to talk to some people. And so she does.
17 She gets that search warrant. She goes over to Denova, and she
18 told you, when she was looking through documents, that is when
19 she first saw some of the LEMCO documents. She saw Rita
20 Lavelle's name on these documents. Wow, Rita Lavelle? That is
21 that EPA lady. She was in the news. She was -- I think she was
22 big-time. I think that was front-page news when she got
23 indicted.

24 Well, the focus of the investigation changed. It now
25 became the Rita Lavelle investigation.

1 Well, Rita Lavelle cooperated, she cooperated over and
2 over again. Agent Freihon told you she met with Ms. Lavelle in
3 early February. She wanted to discuss the LEMCO matter,
4 supposedly the hazardous-waste issues, that Denova was really up
5 to. And you saw Government's Exhibit 59. After their meeting,
6 Ms. Lavelle wrote a memo, sent it to Agent Freihon, telling her
7 "Here's what you need. You want to get Denova, here's what you
8 need to go after them for the hazardous waste."

9 Ms. Lavelle thought the hazardous waste was a serious
10 issue. Who knew it really wasn't?

11 Now, Agent Freihon also told you that in the same month
12 of February, she subpoenaed all of Denova's records regarding
13 the LEMCO issue, she subpoenaed Capital Partners' records, and
14 she also took all of Ms. Lavelle's documents. She took them
15 all. Didn't leave her a copy. February 2001, she had all of
16 the originals of Ms. Lavelle's relating to LEMCO.

17 You remember she also told you when she went to pick up
18 those documents, Ms. Lavelle had the Denova documents in a box
19 relating to the hazardous-waste investigation that Ms. Lavelle
20 thought was the purpose of the meeting. But Agent Freihon told
21 you, "Well, I wanted those other copies. I wanted the LEMCO
22 documents."

23 Ms. Lavelle didn't understand why, but, nevertheless,
24 "Take them, take the documents."

25 So Agent Freihon had those documents, and she's had

1 them for over three-and-a-half years.

2 What happens next? Well, a target letter goes out at
3 some point. But on October 17, 2002, Rita Lavelle goes in to
4 meet with Joe Johns and Agent Freihon. Met with them for hours.
5 But what happened before that meeting? Well, Agent Freihon told
6 you what happened. She gathered up all her documents, all the
7 Capital Partner documents, all the Denova documents, all the
8 Rita Lavelle documents, and she reviewed them. She knew what
9 happened. She knew what happened more than two years prior to
10 this October 17th meeting.

11 Rita Lavelle comes in, talks for hours. They ask her a
12 lot of questions. And how do they ask those questions? "Rita,
13 we have all the documents. We're not going to show you any of
14 them." Now, without seeing these documents, I want you to tell
15 me, when did you send them?" "Two years ago." Tells them.
16 "I'm not showing you." "Please, can I see them?" "No, tell me.
17 You want to go to jail? Tell me." They didn't show her the
18 documents.

19 So she says, "Well, I don't even know what the question
20 was because I don't believe there's any evidence that the
21 question was in evidence." But let's say they asked her a
22 question, and they said, "Clarify something for us." She writes
23 down on her declaration -- and now I'm referring to Defense
24 Exhibit 107, page 7. She writes down, "I never gave Capital
25 Partners any documents until after the problem emerged."

1 Agent Freihon told you several times she knew that
2 there was a serious problem with Rita Lavelle in August of 2000.
3 Agent Freihon told you that she could have asked Rita Lavelle to
4 clarify that by -- what she meant by "the problem." She told
5 you she could have asked her to clarify it. But she didn't.
6 Why? Would have been harder to get an indictment if it was
7 clarified. She didn't want anybody to know what it meant by
8 "problem emerged."

9 Now, there's also a false statement claim regarding
10 Rita Lavelle being asked what accounts receivable was factored
11 by Capital Partners?

12 Well, on page 4 of Rita Lavelle's declaration -- again,
13 Defense Exhibit 107 -- Rita Lavelle explained in writing where
14 she believed the invoice that was factored came from. And Agent
15 Freihon told you that she believed that invoice was referring to
16 the invoice that started out as a purchase order.

17 So, in fact, it's clear from the declaration that Rita
18 Lavelle, on October 17, 2002, told Joe Johns, told Agent
19 Freihon, that was factored. But that is not the question that
20 led to a false statement claim.

21 The question was, allegedly, "What accounts receivable
22 was factored?"

23 Well, if you recall from Sean Walden's testimony, there
24 was no accounts receivable factored. They don't factor accounts
25 receivable. They factor purchase orders. They factor invoices.

1 So Rita Lavelle says, "I don't know." Was she confused
2 by his question? I don't know. Because they didn't write it
3 down anywhere; they didn't ask her to clarify that that question
4 was ever asked so that they could show you this; they didn't
5 tape record any of this so that they could let you hear what was
6 said on that day. Why? It's harder to get an indictment that
7 way. It's really hard to get a conviction that way.

8 It's much easier to show you bits and pieces of a case.
9 And then hope you don't ask any questions. And then hope that
10 the defense doesn't pay attention. There were no false
11 statements here. There was no wire fraud here. This case
12 should have never been brought.

13 Let's look at Government's Exhibit 20, page 1, which is
14 the August 28th letter to Sean Walden.

15 Well, you notice Rita Lavelle references "purchase
16 order," purchase order for the project. In testimony from
17 several witnesses, explain purchase order is not a debt. No one
18 was indebted by this purchase order. It was a request for
19 services. That is what it was.

20 Sean Walden testified that he knew he was given an
21 advance on a purchase order and that he knew that the work
22 wasn't going to be done in at least four to six weeks. He knew
23 it was a P.O. for work that hadn't been done, Cole apparently
24 knew it was a P.O. for work that hadn't been done, and Rita
25 Lavelle certainly knew the same thing.

1 Last page of that same Government Exhibit 20, and it's
2 the purchase order.

3 Now, Mr. Johns made much of the fact that in a couple
4 of miscellaneous letters sent after this date, the word
5 "invoice" was used instead of "purchase order." Well, clearly
6 it says "purchase order" here, and it clearly says this
7 "invoice" here.

8 How do I explain that? I don't have to explain it.
9 It's not significant. Everyone on each side of this deal knew a
10 purchase order was submitted for an advance.

11 Now, at some point, somebody turned that purchase order
12 into an invoice. And this invoices page 2 of Government
13 Exhibit 26, which you'll get to see. Unlike the purchase order,
14 there is no signature from Mr. Bertelli on it, and if you
15 recall -- well, let me focus you up here, the language:
16 "August 29th from Denova." That invoice was faxed from Denova
17 on August 29th.

18 Well, where did that invoice come from? Who made it?
19 Well, Joe Johns -- who usually has a nice, folksy manner, talks
20 to the jury like this -- tried to convince you that Rita Lavelle
21 did it by saying, "Isn't it true you did that invoice?" Doesn't
22 work for him; it's not his style.

23 What do we know? We know that Agent Freihon talked to
24 Paul Schwartz, the controller at Denova. We know that Paul
25 Schwartz told her somebody named Patty made that invoice at Bob

1 Cole's or Gene Van Houten's request. Now, there was a limiting
2 instruction on that. That's not proof that Patty did it, that
3 is not proof that Patty did it at Gene Van Houten's or Bob
4 Cole's request.

5 So what does Agent Freihon do? Talk to Patty? No.
6 She might find out something she doesn't want to hear. She told
7 you she didn't talk to Patty. She told you she never found out
8 who did the invoice. Stopped Joe Johns from accusing Rita
9 Lavelle of doing the invoice? Don't let the lack of
10 investigation get in the way of a prosecution. Of course not.
11 He asked it anyway. What about Sean Walden?

12 Mr. Walden says he would have never agreed to this deal
13 if he knew that Rita Lavelle signed some of these documents
14 instead of Mr. Bertelli.

15 You saw Mr. Bertelli. He came in, he testified. I
16 don't know what his condition was four years ago, but we know he
17 had serious health problems four years ago. Can he sign his
18 name in the condition he is in? Maybe, maybe not. We don't
19 know.

20 Is it reasonable to assume that sometimes other people
21 sign for him? Well, Ms. Lavelle met with Agent Freihon in
22 February, and she said, "I signed for him sometimes. Other
23 times, he signed himself." She repeated that when she met with
24 them in October the following year; she repeated it in front of
25 the grand jury. Let's get back to the grand jury for a second.

1 Rita Lavelle came in and testified before the grand
2 jury, but she wasn't subpoenaed to testify. Mr. Johns read you
3 those long admonitions where he said, "Whoa, it's rare, targets
4 don't do this? She is like, no problem, no problem. I want to
5 do it.

6 What was she brought in there for? One thing and one
7 thing only: She was brought in to give a handwriting exemplar
8 so that Agent Freihon could have it tested to determine whose
9 handwriting was on some of the Bertelli signatures versus
10 others. That is the only reason she was called to the grand
11 jury, for that handwriting sample. What did they do with the
12 sample? Agent Freihon told you: Nothing. Why bother? She had
13 already testified she signed sometimes and didn't other times.
14 Let's not confuse this prosecution with evidence. Let's get
15 back to Sean Walden.

16 He says he didn't know. He says he wouldn't have
17 agreed had he known she signed any of those documents. Well,
18 Defense Exhibit 104 will be back in the jury room. You'll get a
19 chance to look at these documents. These are the documents that
20 went -- excuse me -- these are the documents that Agent Freihon
21 told you came from Capital Partners. She took these documents
22 from Capital Partners in February, 2001, shortly after the
23 investigation started.

24 Well, you heard Mr. Bertelli tell you there was some
25 document that Rita Lavelle had that permitted her to sign

1 everything under the sun -- his words -- everything under the
2 sun.

3 And he was shown a document and he said, "No, that is
4 not it. It was something else." But in Exhibit 104, that
5 document that I showed Mr. Bertelli is there. Now, I'm not
6 saying this document has any legal effect; I don't know the
7 purpose of that document. But one thing I know that document
8 establishes is that this document was in Sean Walden's
9 possession.

10 So Sean Walden was on notice, irrespective of whether
11 this document was the one that gave her power to sign everything
12 under the sun. According to Mr. Bertelli, it's not. But it at
13 least had to have told Sean Walden it looks like Rita Lavelle
14 might be signing for Bertelli. He had to know. Of course he
15 knew. He had that document in his file. And what else did Sean
16 Walden tell you?

17 Well, he gave his fanciful tale that the reason he
18 approved the advance is because he had a guarantee and he could
19 attach Mr. Bertelli's bank account. What about that guarantee?
20 The guarantee was between Denova and LEMCO. You'll get a chance
21 to look at that guarantee. None of you will find that Capital
22 Partners is a party to that guarantee. Does nothing for you.

23 Sean Walden said he believed the guarantee would
24 require payment from LEMCO even if work was never done. That is
25 just not logical. If you want to hire a contractor to have work

1 done in your kitchen and you sign a guarantee to pay the
2 contractor for work performed and then the contractor never
3 shows up, you have to pay on that guarantee? Of course not.

4 And work was never done here. But there's also the issue of the
5 credit check.

6 Mr. Walden told you he ran a credit check on LEMCO:
7 Insufficient credit. He ran a credit check for Mr. Bertelli:
8 Insufficient credit. So he's got this guy in this company with
9 lousy credit, "But I got that guarantee, so I know I can go
10 after these guys with lousy credit if somebody doesn't pay."

11 "Well, if the guarantee doesn't work, I'm going to
12 attach that bank account." But, remember, this is the bank
13 account that Mr. Walden said he didn't know if there were \$10 or
14 \$10,000 in that bank account.

15 How is that bank account, that he doesn't even know has
16 funds in it, going to give him any satisfaction? It's not. It
17 didn't. Mr. Walden told you that Denova had advanced -- excuse
18 me -- Denova had factored over 700 invoices in the year 2000.
19 He estimated it was over \$600,000 of advances. And now don't
20 forget: They're getting about 40 percent return on that.
21 \$600,000 loaned out and a return of 40 percent. That is
22 \$240,000. That is why he made this loan. That is the easiest
23 money anybody could make.

24 And he also told you that when invoices weren't paid by
25 one of the client's customers, they just collect it from another

1 invoice. He told you they always got paid. He wasn't
2 concerned, and that's what happened here. When he found out
3 that the job wasn't going to be done, he just turned to the
4 failsafe method that always gets the job done: Take the money
5 from future invoices.

6 By January 15th, several days before Agent Freihon got
7 a call from that county inspector, this loan was paid off.
8 Capital Partners, this so-called victim, had made their 40
9 percent or more return on that invoice. So why would Mr. Walden
10 lie about any of this?

11 First off, I don't know if he was lying. He told you
12 his company had 25 to 35 clients, like Denova. Well, Denova got
13 advances, factored, whichever term you want to use, over 700
14 invoices. Multiply that times 25 to 35 of their clients, you're
15 well over 10,000 invoices for that year. He didn't remember any
16 of them; he couldn't remember the biggest clients of Denova; he
17 couldn't remember the dollar values; and until he looked at the
18 schedule, he couldn't even remember the numbers of transactions
19 for Denova.

20 Was he lying or was he just mistaken? I don't know.
21 But how could he recall every invoice out of over 10,000 a year?
22 He couldn't. So why would he lie? Well, remember, he explained
23 to you that if a company brought in an invoice for \$100,000,
24 that factoring rate applied would be 27 percent. But the
25 advance would be 70,000. But what would the interest be? Well,

1 for a year, the cost of that \$70,000 loan would be 20 percent of
2 a hundred thousand, not 27 percent of 70. You'd be paying
3 \$27,000 interest on a loan of 70,000 thousand. Well, that is
4 not 27 percent, that's almost 40 percent. But they don't tell
5 you that.

6 Is that fraud to tell somebody that "I'm charging you
7 27 percent" when I'm really charging you 40? I don't know. Ask
8 these people. They're the experts.

9 But maybe that is what Sean Walden had to hide. FBI
10 agents are poking around. They're telling people they charge 27
11 percent when they charge 40. Motive to fabricate?

12 And then he got fired, the FBI grabs all the documents.
13 A short while later, he is out in the unemployment line looking
14 for work. But he told, "Had nothing to do with this, nothing to
15 do with my performance. I was the top guy there. Heck, I made
16 over \$240,000 on Denova alone last year for the company."

17 So why did they fire him? This guy was rolling in the
18 dough then. It's ridiculous.

19 Ladies and gentlemen, after Rita Lavelle got the
20 payment, she didn't stop working. She continued to work on the
21 LEMCO site. You'll get a chance to see Defense Exhibit 108.
22 It's the work plan that was submitted to the EPA for the LEMCO
23 site on October 4th of 2000. It's detailed. There is a lot in
24 there because it required a lot of work.

25 And you heard testimony from John Jaros of the EPA, who

1 told you that at least as of November 8th, of 2000, she was
2 still working on the LEMCO project. He confirmed a letter that
3 he had sent out on November 8 to Rita Lavelle. That was
4 Defendant's Exhibit 19 from John Jaros.

5 Ladies and gentlemen, what about the signatures? Joe
6 Johns kept referring in opening to forgeries. He said
7 signatures were forged. Well, you got a chance to look at
8 Government's Exhibit 78. There was a signature card for
9 Mr. Bertelli. And there was testimony from Mr. Bertelli that he
10 would only sign as Joseph V. Bertelli. But as you can see on
11 the signature card, there are two approved -- at least two
12 approved signature forms: One, Joseph V. Bertelli; the other
13 one, Joseph Bertelli.

14 Well, what about the testimony from the inspector who
15 offered this, Paul Biren, who offered Government's Exhibit 58?
16 Now, he said he issued that to Mr. Bertelli. You see it's
17 signed J.V. Bertelli. I asked Mr. Biren, "Isn't it true that
18 Rita Lavelle was at that meeting and she signed this?" Not
19 trying to hide the ball, just asked him that question.
20 "Absolutely not. I am 100 percent sure." That is what he said,
21 "One hundred percent sure Mr. Bertelli signed that."

22 "Are you certain?"

23 "Absolutely certain Bertelli signed it."

24 Ladies and gentlemen, now where are we? Did
25 Mr. Bertelli sign this? Did he sign any of these documents?

1 Was he mistaken when he said he didn't see certain documents?
2 We don't know. We might have been able to answer that question
3 a little bit more if Agent Freihon had used the handwriting
4 exemplar and had the thing tested. But, you know, that if she
5 gets a result she doesn't like? Not going to do it, don't want
6 to know. That is too dangerous, that's risky.

7 Ladies and gentlemen, there is no possible way that
8 this case can result in convictions for any of these counts.
9 This wire fraud count alleged the wire was the bank, the bank
10 transfer. Well, you remember that a Wells Fargo employee -- I
11 believe her name was Wooley -- testified about Defense
12 Exhibit 101, and I showed her these highlighted items, "fed wire
13 received." Said, "Oh, yeah, those are federal wires." I showed
14 her a couple more, "Oh, yeah, those are federal wires." And
15 then I showed her the one in this case. "Hum, I don't know what
16 that is. I don't know why that is a little different."

17 And Joe Johns steps right up, "Tell me what that is."

18 "I don't know. I've never seen this before."

19 She didn't know. Does this case have a federal wire?
20 It's unclear. It's very unclear.

21 There are two false statement counts in this case, and
22 you have them there before you. Now, the first claim about "I
23 never gave any documents" -- or excuse me -- defendant Lavelle
24 supposedly said she hadn't given any documents until after the
25 problem started. That's what she -- that's what the statement

1 was. There was no statement that -- "I didn't give any
2 documents until after November." Is that a false statement? We
3 don't know that the term "problem" really means in this case
4 because Agent Freihon decided not to clarify it.

5 Well, look at the court's instruction No. 26 that
6 you're going to get. Is that statement, that she didn't give
7 any documents until after the problem started, false? No.
8 Jurisdiction of the Federal Bureau of Investigation, we'll give
9 them that one. Jurisdiction of the FBI is pretty much
10 everything.

11 "Statement was given with knowledge that it was
12 untrue." Well, Ms. Lavelle wrote on her declaration, "This is
13 to the best of my recollection. This is to the best of my
14 recollection, without the aid" -- again, I'm referring to
15 page 10 of Defense Exhibit 107. "This is written to the best of
16 my recollection, without benefit of notes or other aid."

17 Did she know it was untrue? She didn't even know
18 herself. She wasn't sure. Remember, she was being asked by
19 Agent Freihon, who was holding the stack of documents and
20 wouldn't let her see them. She wasn't sure.

21 The government claims the statement was material.
22 Could have influenced the agency's decisions or activities.

23 (Discussion held off the record.)

24 THE COURT: I think the jury needs a break. So we'll
25 take a short recess. Please return back to the courtroom at 25

1 after the hour. We will continue with the trial.

2 During your absence, please do not discuss the case
3 among yourselves or with any other person.

4 (OPEN COURT - JURY NOT PRESENT:)

5 THE COURT: Would you have a seat, please. The jury is
6 excused. I try to avoid interrupting argument, but it was
7 apparent it was close to an emergency. We're in recess.

8 (OPEN COURT - JURY PRESENT:)

9 THE COURT: The jury is reassembled, with the
10 alternates looking more comfortable.

11 Mr. Cephas.

12 MR. CEPHAS: Thank you, Your Honor.

13 Ladies and gentlemen, there's no question in this case
14 that my client is not guilty of the crimes she's charged with,
15 and the evidence demonstrates her innocence.

16 But we're not required to prove innocence in the
17 system; we're not required to prove anything. The burden is
18 completely on the prosecution to prove every element beyond a
19 reasonable doubt.

20 And, again, let's start with the two false statement
21 claims.

22 The first element of a false statement claim, that it
23 was a false statement.

24 Well, the indictment charges that the false statement
25 was, essentially, "I didn't send any documents until after

1 Capital Partners sent an invoice to Joe Bertelli."

2 But you saw page 7 of her declaration, that is not that
3 she wrote. That she wrote is, "I didn't send any documents
4 until after the problem started."

5 We don't know that was meant by "problem" because the
6 agent didn't ask her to clarify. Can that possibly be a false
7 statement beyond a reasonable doubt? We don't know that it
8 means.

9 And then you also have to remember that Ms. Lavelle
10 wrote, "This is to the best of my recollection."

11 Nowhere did she say, "I'm absolutely certain of this
12 fact," she did not. So it cannot possibly prove the first
13 element beyond a reasonable doubt.

14 Again, second one, jurisdiction of the FBI, they can
15 have it.

16 How about that the defendant acted with knowledge that
17 the statement was untrue? Beyond a reasonable doubt? Again,
18 remember, I'm not going to pick the documents up again, but she
19 asked her, "Tell me."

20 She could have shown her the documents, she could have
21 asked her to clarify. The statement was made to the best of her
22 recollection. Nowhere can they show that statement was made
23 with knowledge that it was untrue.

24 And then was the statement material? Could it have
25 influenced aiding decisions or activities? Well, now, remember:

1 Agent Freihon had reviewed all the documents, she told you that.
2 Reviewed all the documents before that October 17th, 2002
3 meeting.

4 She knew that happened backwards and forwards, she had
5 the documents with her. Now, she asked Ms. Lavelle certain
6 questions. She's got all these documents that show they went to
7 Capital Partners in August.

8 And she testified that she knew that when Ms. Lavelle
9 made her statements, she knew that, in her mind, those
10 statements were false because she thought that Ms. Lavelle was
11 referring to November by "the problem," and she knew it was
12 false because she had a stack of documents dated August.

13 Could that have influenced anybody beyond a reasonable
14 doubt? Well, we know it couldn't have influenced this agent;
15 she had been involved in this case for over two years.

16 Could it have influenced another agent? Well; you
17 can't just take an agent out of the audience who's never seen
18 anything in the case and say, "Hey, do you know about this
19 case?" Of course it might influence, but that is not how you
20 make the determination.

21 Would another agent or any agent who is given access to
22 these documents, who has an opportunity to review all these
23 documents, and then is given the opportunity to ask Ms. Lavelle
24 a question, after looking at all these documents of August,
25 could anybody be influenced by that?

1 During voir dire, I asked one of the jurors if I told
2 him that Howard Dean was on the democratic ticket, could he be
3 confused by that. Absolutely not. Nobody could. The only
4 person that could would be somebody who just came onto the
5 planet and had never read anything.

6 No reasonable person who is given access to the
7 documents that Agent Freihon had been given would be confused by
8 that statement. Nobody could. They cannot prove that beyond a
9 reasonable doubt.

10 Same thing with Count Three. Now, in Count Three, the
11 government alleges that Ms. Lavelle was asked which account
12 receivable of Denova Capital Partners was factoring, and she
13 said she didn't know, when the government claims she really did
14 know.

15 Well, she wrote on another page of her declaration that
16 she did know that invoice was factored, it was that phony
17 invoice that somebody at Denova apparently doctored up that
18 started out from the purchase order, and the agent told you she
19 knew that's what Rita Lavelle was referring to in that statement
20 of her declaration.

21 So that is the false statement here if, in fact, that
22 question was asked? Well, the false statement is, "I don't
23 know." Is that false?

24 She was asking about accounts receivable. Sean Walden
25 said they don't factor accounts receivable, they factor

1 purchases or invoices. The question didn't make sense. If the
2 question was asked, didn't make sense. There is no false
3 statement in that count as a matter of law.

4 Jurisdiction of the FBI, throw that one in again. They
5 can have it. With knowledge of the statement wasn't true, I
6 don't know. When somebody asks you a question, and you don't
7 understand it, and you say, "I don't know," how could that ever
8 be?

9 False beyond a reasonable doubt? You can ask a person
10 their phone number sometimes and they'll forget it because
11 they're confused. Is that a false statement? No. Can't be.
12 And could it have influenced this agent's decision? No, it
13 didn't, couldn't have.

14 Could it have influenced anybody's? How can "I don't
15 know," how can "I don't understand your question," change the
16 scope of an investigation when you have all the documents, and
17 when, on another page in the declaration, it says that invoice
18 was factored.

19 That cannot be a false statement beyond a reasonable
20 doubt as a matter of law. Those two counts just cannot -- the
21 government cannot meet their burden on those two false statement
22 counts.

23 But what about the wire fraud count? There are several
24 elements that the government would have to prove beyond a
25 reasonable doubt. Well, I submit, the evidence shows

1 Ms. Lavelle didn't, but for the sake of argument, what does the
2 government have?

3 Do they have evidence beyond a reasonable doubt that
4 Rita Lavelle knowingly devised or knowingly participated in a
5 scheme or plan to defraud? Well, all the parties here
6 understood a purchase order was going to be factored, a purchase
7 order was factored. That's the scheme to defraud?

8 Sean Walden knew the work hadn't been done, he knew it
9 wasn't going to be done for four to six weeks, he knew it was
10 work that had not been done.

11 Promises or statements were false beyond a reasonable
12 doubt. The government's case is confusing here. It's unclear
13 that those promises or statements they're talking about, and are
14 they false beyond a reasonable doubt? Again, their case just
15 doesn't even make any sense on this count.

16 Promises or statements made or facts omitted were
17 material? Well, which promises? Which statements? Rita
18 Lavelle told the government over and over again she signed some
19 things and she didn't sign some other things.

20 They never chose to test it. We don't know and we're
21 not going to know whether she signed the documents. Is there
22 some uncertainty here? There certainly is. I -- withdraw that.

23 When Paul Biren got on the stand and said he is a
24 hundred percent certain that Mr. Bertelli signed that document,
25 that just threw a lot more uncertainty into this case. They

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24 hundred percent certain that Mr. Bertelli signed that document,
25 that just threw a lot more uncertainty into this case. They

1 could have clarified had they chosen to use the handwriting
2 exemplars and tested, but, again, they didn't want to do that.

3 ~~Intent to defraud, who had intent to defraud here?~~

4 Again, it was a purchase order. All parties agreed that it was
5 a purchase order. Sean Walden knew he was going to get paid no
6 matter that happened.

7 Rita Lavelle was owed money from Denova. She was
8 getting her money. Denova owed her money; they paid. Walden
9 knew that he would get the money from other invoices at the end
10 of the day if, for some reason, that purchase order didn't get
11 paid, if the job wasn't done, and it didn't become an invoice.

12 Well, someone here created an invoice. We don't know.
13 Agent Freihon could have done some investigation here to
14 determine who created that invoice. She could have followed up,
15 she could have tried to locate Patty to determine if Patty did,
16 in fact, create that invoice, and, if so, why.

17 Was it a mistake by Denova or did Denova have intent to
18 defraud? We don't know. Those questions weren't asked; the
19 investigation was incomplete.

20 So where is the intent to defraud beyond a reasonable
21 doubt? You can't look into only half the questions, purposely
22 ignore relevant evidence, ignore when somebody tells you, "I
23 think that is where the invoices started out."

24 I'm not going to go look, I'm just going to ask a jury
25 of 12 people to say, "Forget it." Joe Johns asked Rita Lavelle,

1 you heard it, he asked Rita Lavelle did she make the invoice.
2 Isn't it true she made the invoice?

3 Well, isn't that enough for beyond a reasonable doubt?

4 Of course not. Beyond a reasonable doubt, at a minimum, would
5 have required Agent Freihon to go talk to Patty. That wasn't
6 done.

7 And as soon as Rita Lavelle saw the invoice in
8 November, Government Exhibit 37 got sent out to Cole, Van Houten
9 and Walden, and it said -- she said to them, "No waste has left
10 LEMCO."

11 There is no invoice for this purchase order. She had
12 never seen that purchase order before. There's no evidence she
13 had seen that purchase order.

14 So did the government prove intent to defraud beyond a
15 reasonable doubt? Well, maybe for Capital Partners telling
16 people their interest rate is 27 percent when, in reality, it's
17 closer to 40, but not by Rita Lavelle.

18 They did not show any intent to defraud, they certainly
19 didn't come close. Not even on the same planet as intent to
20 defraud beyond a reasonable doubt.

21 THE COURT: Mr. Cephas, will you please conclude your
22 argument.

23 MR. CEPHAS: Yes, Your Honor.

24 And then finally, wire transfer across state lines,
25 beyond a reasonable doubt? No. They put someone else up from

1 Wells Fargo, I believe her name was Wooley. She said she didn't
2 even know. The government was trying to pull the wooley over
3 your eyes. That is not beyond a reasonable doubt for the wire
4 transfer, it can't be.

5 So what is going to happen here? Is history repeating
6 itself? As I told you in opening, about 20 years ago, she was
7 indicted for contempt of Congress, Rita Lavelle was indicted for
8 contempt of Congress.

9 She went on trial in federal court, a jury of 12 people
10 acquitted, not guilty. Two weeks later, they were right after
11 her again, another indictment.

12 Well, you heard Agent Freihon tell you, "Oh, we're
13 still investigating that hazardous waste stuff, that Denova
14 stuff. Trust me, we're going to get around to that. Oh, and
15 Rita Lavelle is still a target of that."

16 When they lose here, will she be reindicted like what
17 happened 20 years ago? I don't know. They have the power to do
18 that. That is their determination. I'm not going to worry
19 about that. But they have shown in this case, they cannot be
20 trusted with that power. But I'm not going to worry about what
21 happens tomorrow, I'm worrying about what happens here today.

22 Ladies and gentlemen, Rita Lavelle is not guilty of any
23 of these charges. Individuals here have their chance to finally
24 make front page of the news and give them a news story. Go
25 back, vote not guilty in ten minutes, and come right back here

1 and then go home for the weekend.

2 THE COURT: Mr. Cephas, please conclude.

3 MR. CEPHAS: Thank you, ladies and gentlemen.

4 THE COURT: Thank you.

5 Ms. Kim, closing.

6 MS. KIM: Yes, Your Honor.

7 Ladies and gentlemen, you've heard numerous times:
8 Nothing I say is evidence, nothing defense counsel says is
9 evidence, nothing he says is evidence, nothing outside of what
10 you've heard from the witness box, nothing outside from the
11 documents that you received is evidence.

12 So why all this talk about Special Agent Freihon, her
13 stack of documents, and yelling at the defendant? All of this
14 talk is a distraction. It's an effort to deflect your attention
15 to the matter at hand.

16 The matter at hand is Count One, a wire fraud count;
17 Count Two and Count Three, false statement counts.

18 Ladies and gentlemen, the defendant has demonstrated
19 she is someone who deflects attention. She talks about her
20 prior conviction, that is not her fault. It's politics,
21 politics in Washington, D.C., not her fault.

22 When Special Agent Freihon wants to talk to her about a
23 LEMCO-backed scheme, she deflects, "Let me tell you about
24 Denova. Let me tell you about Denova and their waste management
25 problems."

STATE OF CALIFORNIA)
)
) CR 04-374 (A) -SJO
)
COUNTY OF LOS ANGELES)

I hereby certify that the foregoing matter, entitled
THE UNITED STATES OF AMERICA versus RITA MARIE LAVELLE, is
transcribed from the stenographic notes taken by me and is
a true and accurate transcription of the same.

Deborah K. Gackle
Deborah K. Gackle
CSR No. 7106

December 16, 2004

Date